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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/698,581

10/31/2003

John Thurl Pottenger

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EXAMINER

BASICHAS, ALFRED

ART UNIT

PAPER NUMBER

3749

MAIL DATE

DELIVERY MODE

09/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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**Office Action Summary**

Application No.

10/698,581

Applicant(s)

POTTENGER ET AL.

Examiner

Alfred Basichas

Art Unit

3749

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 8-11 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taplan (6,032,662) in view of Rice (4,869,231).

a. Taplan discloses substantially all of the claimed limitations including, among other things, a cook top 1, a burner box (see at least figs. 2, 3, and 5 – the area between elements 1 and 3), supply tube 19, a resilient metal force members 4,7,8,15,18, attaching member 5,6,10, and a bracket 2 for attaching the unit to the frame 12. Nevertheless, Taplan does not specifically recite that **“the cooktop is movable while connected to the burner box.”**

b. Rice teaches a cooktop and burner box arrangement in which the cooktop is hingedly attached to and moveable with relation to the burner box in order to permit access for cleanup (see at least col. 1, lines 9-19).

c. Accordingly, it would have been obvious to one having ordinary skill in the art at the time of invention to incorporate the hinge arrangement taught by Rice into the invention disclosed by Taplan, so as to permit access for cleanup.

5. Claims 12-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taplan (6,032,662), which discloses substantially all of the claimed limitations. Taplan does not specifically recite the claimed rear or front positioning, a spark igniter, 2 to 4 burners, a venturi tube, a pressure regulator, a gas valve, a cooking grate, or steel as the metal for the force member. Nevertheless, Official Notice is given that the claimed rear or front positioning, a spark igniter, 2 to 4 burners, a venturi tube, a pressure

regulator, a gas valve, a cooking grate, or steel as the metal for the force member are all notoriously old and well known in the art. Such arrangements have clear and obvious and notoriously well known benefits. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the above elements into the invention disclosed by Taplan, so as to provide for well known benefits.

### ***Response to Arguments***

6. Applicants' arguments with regard to the rejected claims have been considered, but are not deemed persuasive.

d. Applicant's basis for the traversal of the rejection of the claims is based on the assertion that the prior art is not combinable because Taplan teaches away from Rice. Specifically, applicant asserts that Taplan's desire to allow service without "disassembly of the cooktop from the countertop." Nevertheless, the examiner disagrees that Taplan teaches away. One of ordinary skill having knowledge of Taplan and Rice would not conclude that the two references were uncombinable. Rather, it is the examiner's position that one of ordinary skill would recognize the benefit of Rice's moveable top to provide greater access. Further, it is the examiner's position that Taplan does not preclude that **"the cooktop is movable while connected to the burner box."** Taplan simply states "without disassembly." Since the top is still connected, there is no disassembly.

e. The examiner's assertion of Official Notice is taken to be admitted prior art in view of applicants' non-traversal of the assertion. MPEP 2144.03. The examiner appreciates applicants' waiver and efforts to expedite prosecution of the instant invention by avoiding unnecessary deliberations of well known aspects of the art.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

Art Unit: 3749

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

September 12, 2007

  
Alfred Basichas  
Primary Examiner